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Waste Motor Oil Disposal Site Remediation Program

Maine Department of Environmental Protection

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January 19, 2010

Hand delivered to:

Cross State Office Building, Room 214-A

Honorable Seth A. Goodall, Senate Chair
Honorable Robert S. Duchesne, House Chair
Joint Standing Committee on Natural Resources
Maine Legislature
100 State House Station
Augusta, Maine 04333-0100

Re: Waste Motor Oil Disposal Site Remediation Program

Dear Sen. Goodall, Rep. Duchesne and Distinguished Members of the Joint Standing Committee on Natural Resources:

On behalf of the Finance Authority of Maine (FAME), the Maine Department of Environmental Protection (DEP), and Maine Revenue Services (MRS), enclosed please find twenty (20) copies of the combined biennial report of FAME and DEP regarding the Waste Motor Oil Disposal Site Remediation Program and the annual program revenue report of FAME and MRS.

Please do not hesitate to contact me or the agency representatives identified in the report should you require any further information.

Sincerely yours,

Katryn Gabrielson
Deputy General Counsel

cc w/ encl: David W. Wright, DEP
Peter B. Beaulieu, MRS

Report to the Joint Standing Committee
on
Natural Resources

Waste Motor Oil Disposal Site Remediation Program

January 15, 2010

Submitted by:
Finance Authority of Maine
Department of Environmental Protection
Maine Revenue Services

Introduction

In accordance with 10 MRSA § 1020-B¹, this constitutes the:

1. Second biennial joint report of the Finance Authority of Maine (“FAME”) and the Maine Department of Environmental Protection (“DEP”) regarding the Waste Motor Oil Disposal Site Remediation Program (the “program”); and
2. The first annual joint report of FAME and the State Tax Assessor, by and through Maine Revenue Services (“MRS”). Pursuant to 10 MRSA §1020-B(2), FAME and the State Tax Assessor may submit their annual report as part of the FAME-DEP biennial report in years in which the biennial report is due.

The report consists of:

1. A brief history of the events which led to the creation of the program, provided by DEP;
2. A summary of the related hazardous waste law provided by DEP;
3. A summary of the program and status report of the program provided by FAME;
4. DEP’s status report on the four waste motor oil disposal sites subject to the program;
5. FAME and MRS’s report of revenues collected through calendar year 2009; and
6. Conclusion.

Agency contact information can be found on page 8.

1. History of the Portland Bangor Waste Oil Company (DEP)

Beginning in 1951, Mr. George West (now deceased) began operating a waste oil recycling business known as the Portland-Bangor Waste Oil Company (PBWO). The company collected used motor oil from military bases, auto dealerships, municipalities, agencies of the state and federal government, local garages, industries, school districts, and utility companies throughout Maine and other parts of New England. The waste oil was stored in tanks in the Town of Wells, and then the operation expanded to at least four other locations in Maine: Casco, Ellsworth, Plymouth, and Presque Isle. Sometimes the waste-oil was contaminated with used solvents.

¹ **10 MRSA §1020-B. Status reports**

The following reports related to the waste motor oil disposal site remediation program under section 1020-A must be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources matters.

1. Program report. By January 15, 2010 and every 2 years thereafter, the authority and the Department of Environmental Protection shall report on the status of the waste motor oil disposal site remediation program under section 1020-A.

2. Funding report. By February 15, 2010 and every year thereafter, the authority and the State Tax Assessor shall report the revenue collected pursuant to section 1020, subsection 6-A for the preceding calendar year. The report may be incorporated into the biennial report required under subsection 1. The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation related to the report required under this subsection.

PBWO used settling tanks to stratify the used oil, decanting the lighter oil and selling it as a fuel supplement, while selling the heavier oils as dust suppressant on dirt roads. However, some of the waste oil and solvents were spilled or improperly disposed of at the five sites, contaminating soil and groundwater. George West ceased operation of the PBWO in 1988.

2. The Uncontrolled Hazardous Substances Sites Law (DEP)

To address pre-existing contamination at sites like PBWO, in 1983 the Maine Legislature created the Uncontrolled Hazardous Substance Sites Program (Uncontrolled Sites Program)². Under the Uncontrolled Sites Law:

- Hazardous substances are broadly defined to include hazardous wastes, waste oil and most other pollutants;
- DEP is authorized to designate locations where hazardous substances are located as Uncontrolled Hazardous Substance Sites;
- DEP is authorized to investigate and clean up uncontrolled hazardous substance sites, or to require responsible parties to undertake the cleanup;
- DEP is authorized to recover the cost of investigations, cleanup and other “response costs” from responsible parties. Liability is joint and several;
- Responsible parties are individuals or companies that:
 - Owned or operated the site at any time after the hazardous substance arrived there;
 - Generated the hazardous substances handled at the site; or
 - Transported the hazardous waste to the site.

The DEP obtained all of the business records of the PBWO, and was able to identify hundreds of former customers as Potential Responsible Parties (PRPs) for the purpose of recovering its cleanup expenditures. The DEP is obligated to investigate and remediate over a thousand potential uncontrolled sites in the state, and aggressively pursues cost recovery from PRPs at these sites because it is the primary source of funding available for the work. Hazardous Waste Bonds to undertake these activities have dwindled in recent years, and there is no other revenue stream to fund the Uncontrolled Sites Program.

3. The Waste Motor Oil Disposal Site Remediation Program (FAME)

In 2007, at the urging of affected Maine businesses, the Maine Legislature established the Waste Motor Oil Disposal Site Remediation Program in 10 MRSA § 1020-A. The law, amended in 2008 and 2009, is intended to help eligible PRPs pay their share of response costs associated with the cleanup of the four PBWO sites in Casco, Ellsworth (the Robbins property), Plymouth (the Hows Corner Superfund Site), and Presque Isle.³

The law authorizes FAME to pay the past and future response costs of certain PRPs including the following types of businesses:

² 38 MRSA §1361 *et seq.*

³ The DEP and PRPs had already reached agreement on expenditures for the fifth site in Wells, facilitated in part by a grant program administered by FAME.

1. State licensed new car and truck dealers;
2. State licensed used car and truck dealers;
3. Some commercial auto repair shops;
4. Some fleet auto repair shops;
5. Some shops that performed repairs on some special or other mobile equipment; and
6. Parties that sent 110 gallons or less of waste oil to a site.

The program authorizes FAME to issue up to \$30,000,000 in revenue obligation bonds with the state's moral obligation to fund the response costs of eligible PRPs at the sites. FAME also is authorized to issue up to \$5,000,000 in bonds as capital reserve funds for the bonds issued to pay response costs. The bond payments will be made with revenues collected originally from a premium on motor oil changes that was effective from October 1, 2007⁴ until July 31, 2008, and then from a premium collected on the sale of bulk motor vehicle oil beginning August 1, 2008,⁵ and, effective October 1, 2009, from a premium collected on the sale of pre-packaged motor oil, as well.⁶ The revenues are deposited in the Waste Motor Oil Revenue Fund established under 10 MRSA §1020.

On September 30, 2009, FAME issued its \$14,495,000 Finance Authority of Maine Waste Motor Oil Revenue Bonds 2009 Series A (Federally Taxable) (the "2009 Bonds"), of which \$14,467,117.50 is available for the benefit of the Plymouth site. The Certificate of Determination issued by FAME in connection with the bond closing found that the total response costs of the Plymouth PRPs was \$21,417,185.93, but the amount of the issuance was reduced in large part by the lack of revenues to support any more debt. Issuance of the bonds entailed, among other steps required for statutory compliance, issuing an RFP for underwriting services and selecting an Underwriter (Stern Brothers & Co., St. Louis, MO); issuing an RFP for trustee services and selecting a Trustee (Bank of New York Mellon, Boston, MA); selection of Underwriter's counsel by the Underwriter (Preti, Flaherty, Beliveau & Pachios, Augusta, ME); selection of Issuer's bond counsel (Hawkins, Delafield & Wood, New York, NY); and issuing an RFP for retail co-manager services and selecting retail co-managers (Edward Jones and Wachovia Bank, National Association).

It was originally anticipated that the bonds would be issued in tranches, or series, as statutory pre-conditions at each site were met. However, developments leading up to the issuance of the 2009 Bonds suggest that current revenues, even as amplified by the expanded premium which became effective October 1, 2009, will be insufficient to fully cover response costs at all four sites. The original per-motor-vehicle oil change fee of \$1-\$3 (depending on vehicle size) did not generate revenues projected by the Maine Auto Dealers Association and also proved to be administratively burdensome for many small businesses. Enforcement by MRS was also difficult, due to the number of entities collecting and paying the premium. It is thought that the

⁴ Pursuant to P.L. 2007, chapter 464, section 6.

⁵ Pursuant to P.L. 2007, chapter 618, section 11.

⁶ Pursuant to P.L. 2009, chapter 213, Section KKK. This legislation became effective May 28, 2009, at which time the provision expanding the definition of motor vehicle oil subject to the premium also became effective. The effective date for the implementation of the premium on pre-packaged motor oil was established as October 1, 2009. Since the oils and lubricants captured by the expanded definition of motor vehicle oil are only sold and distributed as pre-packaged motor vehicle oil, and not as bulk, the premium on the new oils and lubricants also became effective October 1, 2009 as a practical matter.

projections may have fallen short due in part to an underestimation of the “do-it-yourself” factor. The per-motor-oil-change premium was repealed and replaced with a premium on the first sale or distribution of bulk motor vehicle oil of \$1.10/gallon for gasoline engine oil and \$.35/gallon for diesel engine oil. Again, those revenues did not meet expectations as calculated by the Maine Auto Dealers Association. In 2009, the revenue stream was amended a second time, to expand the definition of motor vehicle oil and expand the premium to sales of prepackaged motor oils, effective October 1, 2009. As a result of the uncertainty around the revenue stream, FAME engaged PB Consult, a division of PB Americas, Inc., to conduct a revenue forecast over a twenty year period, prior to issuing the 2009 Bonds. The revenues forecasted to be generated were taken into account in determining the amount of the 2009 Bonds. Current revenues are not anticipated to be sufficient to support the original anticipated \$30,000,000 capacity of the program. Among other factors, it was determined that increased vehicle efficiency and lubricant efficiency would drive down purchases of motor vehicle oils. As a result, FAME does not anticipate the issuance of additional bonds to complete payment of response costs at Plymouth or to pay response costs at the other sites unless sufficient revenues are generated.

In 2009, when it became apparent that the revenues would not support a bond issuance for the total response costs of the Plymouth PRPs, FAME promulgated an agency rule. Among other provisions, Chapter 321 of the Rules of the Finance Authority of Maine establishes a procedure for prorating available funds among eligible parties.

4. Activities and Eligible Expenses at the Waste Motor Oil Disposal Sites (DEP)

At this time, DEP is undertaking the following cost-recovery actions at the four sites subject to the Waste Motor Oil Disposal Site Remediation Program.

Plymouth (aka Hows Corner Superfund Site). The Plymouth site is located off Route 7 in Plymouth. In the 1990s, DEP and EPA removed highly contaminated soil and installed a public water system in the area. DEP and EPA are finalizing an agreement with the PRPs in which the PRPs will install a system to control the spread of groundwater contamination. Concurrently, DEP and the PRPs are finalizing a Natural Resource Damage settlement for contaminated groundwater below 200 acres in the area. The final settlement was lodged in federal court in December of 2009 and, when approved (“entered”) by the court, will finally resolve the liability of some 432 PRPs at the site. After entry, FAME will disburse the bond proceeds to fund the settlement for the future response costs of qualifying PRPs. This final settlement was only made possible by the 2009 Bonds.

Ellsworth (aka Robbins Property). At the Ellsworth site, located off Route 1A, contaminated groundwater has spread to nearby homes and a vocational school some 2,200 feet away. In 2002 DEP removed the highly contaminated soil from this site, which was a continuing source of pollutants to groundwater, and has been monitoring groundwater at and around the site. DEP also supplied filters on impacted wells, until the area can be supplied by a waterline extension, which is scheduled for the fall of 2010. DEP is also determining appropriate compensation for natural resource damages.

In January 2009, DEP notified some 223 PRPs of their potential liability for clean-up of the site, and on March 4, 2009, DEP held a meeting with the PRPs, which was also attended by FAME, to begin negotiations of a final site settlement. The PRPs declined to form a negotiating group, in large part because the Plymouth settlement had not been reached, and it appeared then that Plymouth response costs could use up the entire bond proceeds available.

Since that time, FAME has issued the Certificate of Determination and the 2009 Bonds for Plymouth, resulting in an approximate \$7 million shortfall to Plymouth PRPs. On top of this, DEP anticipates that eligible response costs at the Ellsworth site will be about \$3.4 million. DEP intends to move to final resolution of costs and liability at this site during the winter and spring of 2010.

Casco. The Casco site is located on Tenney Hill Road off Route 11. In 2002 and 2003, DEP removed the highly contaminated soil from the Casco site and has been monitoring groundwater at and around the site. DEP's next steps are to use deed restrictions to prevent exposure to contaminated groundwater and to determine appropriate compensation for natural resource damages. DEP is pursuing settlement of this site parallel with the settlement of the Ellsworth site. In January 2009, DEP issued Notices of Potential Liability to some 194 PRPs and invited them to a February 25, 2009 meeting to discuss settlement, which was also attended by FAME. As with Ellsworth, the PRPs declined to form a negotiating group until there were better assurances that eligible costs would be covered by the program. DEP estimates that response costs at Casco will be about \$2.6 million. DEP intends to move to final resolution of costs and liability at this site during the winter and spring of 2010.

Presque Isle. After conducting an initial investigation, DEP has determined that the site does not appear to pose an imminent and substantial danger to people currently drinking the area groundwater. Subject to sufficient funding, DEP will continue to assess the long-term risk posed by this site and appropriate remedial options. While DEP possesses a trailer load of Portland-Bangor Waste Oil Company records, these records have not been systematically reviewed to develop volumetric rankings as they were for the other three sites. Under the current law, this ranking will need to be done before FAME can disburse funds to cover response costs, but it may cost over \$750,000 to conduct this research. If this statutory requirement was eliminated, it would not endanger public health or increase costs to the PRPs. Although it is difficult to accurately assess total cost at this stage of the investigation, DEP's best estimate is that work at this site will cost less than \$2 million.

5. Waste Motor Oil Revenue Fund (FAME and MRS)

Revenues collected per month by the State Tax Assessor and deposited to the Fund to date (unaudited):

2009

November	\$289,788.44
October	\$203,522.57
September	\$182,730.18

August	\$138,228.30
July	\$161,025.61
June	\$154,497.33
May	\$106,701.51
April	\$128,739.27*
March	\$129,001.43
February	\$133,717.18
January	\$234,795.36**

* The amount actually transferred to the Fund (in June 2009) included an additional \$739 attributable to the prior premium.

2008

December	\$141,566.10
November	\$145,003.60
October	\$193,449.11
September	\$221,711.09
August	\$121,125.51
July	\$135,536.00
June	\$117,352.00
May	\$117,586.00
April	\$ 92,311.00
March	\$138,329.00
February	\$103,213.00
January	\$116,710.00

2007

December	\$127,887.00
November	\$117,835.00
October	\$120,700.00*

* This reflects the amount collected, although the amount actually transferred to the Fund was decreased by \$11,000 (to \$109,700) as a result of a one-time payment to MRS for its administrative costs, as authorized by the enabling legislation.

Revenues collected in a given month are due to the state by the 15th of the following month and are deposited in the Fund at the beginning of the next month (for example, November 2009 revenues are deposited to the Fund in January 2010).

6. Conclusion

When passing the original program legislation, the Legislature intended to raise \$30,000,000 to cover all of the estimated response costs of eligible PRPs at the four eligible sites. The program

recently led to the successful resolution of liability for some 432 PRPs, including many small businesses, at the Plymouth site. DEP's latest estimates for eligible response costs for each site in the program are as follows:

Site	Current DEP Estimate of Cost
Plymouth (Hows Corner)	21,417,186
Ellsworth	3,420,360
Casco	2,644,702
Presque Isle	2,000,000
Total Costs	29, 482,248

The 2009 Bonds generated \$14,467,117.50 for eligible response costs, which will only partially fund the Plymouth PRPs. This is approximately \$15 million less than currently projected needs for all four sites.

For Further Information

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